

June2, 2000

Re: 00-0199

TO ALL PARTIES OF INTEREST:

Enclosed is a copy of the Memorandum from the Hearing Examiner to the Commission and a the Memorandum from Commissioner Kretschmer to the Hearing Examiner regarding recommended action at the Pre-Bench Session on May 31, 2000 and the Bench Session on June 1, 2000.

Sincerely,

Donna M. Caton  
Chief Clerk

DMC:jbm  
Enclosure

**Docket No.:** 00-0199  
**Bench Date:** 06-01-00  
**Deadline:** 06-07-00

**M E M O R A N D U M**

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**TO:** The Commission

**FROM:** Larry Jones, Hearing Examiner

**DATE:** May 23, 2000

**SUBJECT:** WPS Energy Services, Inc.

Application for Certificate of Service Authority under Section 16-115 of the Public Utilities Act.

**INTERVENORS:** Peoples Energy Services Corporation ("PE Services"), which holds a certificate as an ARES, and Commonwealth Edison Company ("ComEd").

**STATUS:** An order granting Applicant's request for an ARES certificate for the ComEd service area, as well as the service areas of certain other electric utilities, was entered on April 18, 2000 and served on April 19, 2000.

**REHEARING REQUEST:** A petition for rehearing was filed on May 18, 2000 by PE Services. ComEd has not filed a rehearing petition, and the time for doing so has expired.

**RECOMMENDATION:** None. It is noted that that when the case was considered by the Commission prior to entry of the Order on April 18, there were comments to the effect that the rehearing process would be or may be an appropriate way to more fully address the Section 16-115(d)(5) reciprocity provisions which provide protections to Illinois electric utilities in certain circumstances. As stated above, PE Services, an ARES, has requested rehearing, but ComEd has not.

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**Background; Reciprocity Issues in Section 16-115(d)(5); April 18 Order**

In this proceeding, WPS Energy Services, Inc. ("Applicant"), which is an affiliate of Wisconsin Public Service Corporation and Upper Peninsula Power Company, filed a verified application with the Commission requesting a certificate of service authority in

order to become an alternative retail electric supplier ("ARES") in Illinois pursuant to Section 16-115 of the Public Utilities Act and 83 Ill. Adm. Code 451 ("Part 451").

The deadline for action was April 24, 2000, which was 45 days after the date of publication. Action within 45 days is required under Section 16-115(b).

In its request as amended, Applicant sought authority for the sale of retail electricity and power to eligible nonresidential retail customers with total maximum electric demand of one megawatt ("MW") or more in the service areas of Commonwealth Edison Company, Central Illinois Public Service Company, Illinois Power Company and Central Illinois Light Company.

As noted above, Applicant is an affiliate of Wisconsin Public Service Corporation, of Green Bay, Wisconsin, and Upper Peninsula Power Company, of Houghton, Michigan. These two affiliates own and control electric transmission and distribution facilities for public use and for delivery of electricity to end users in defined geographic regions in Wisconsin and Michigan, respectively. Neither of the affiliates' electric service territories are open to retail electric competition and customer choice at this time. Hence the reciprocity provisions of Section 16-115(d)(5) come into play. Under Section 16-115(d), if "electric power and energy can be physically and economically delivered" to the service areas of an applicant's electric utility affiliates by the Illinois utilities in whose service territories the Applicant plans to offer service, and the service areas of the applicant's affiliates are not open to competition, then the application may not be granted. More specifically, Section 16-115(d)(5) of the Act states in part:

(d) The Commission shall grant the application for a certificate of service authority if it makes the findings set forth in this subsection based on the verified application and such other information as the applicant may submit:

. . .

(5) That if the applicant, its corporate affiliates or the applicant's principal source of electricity (to the extent such source is known at the time of the application) owns or controls facilities, for public use, for the transmission or distribution of electricity to end-users within a defined geographic area to which electric power and energy can be physically and economically delivered by the electric utility or utilities in whose service area or areas the proposed service will be offered, the applicant, its corporate affiliates or principal source of electricity, as the case may be, provides delivery services to the electric utility or utilities in whose service area or areas the proposed service will be offered that are reasonably comparable to those offered by the electric utility, and provided further, that the applicant agrees to certify annually to the Commission that it is continuing to

provide such delivery services and that it has not knowingly assisted any person or entity to avoid the requirements of this Section. For purposes of this subparagraph, "principal source of electricity" shall mean a single source that supplies at least 65% of the applicant's electric power and energy, and the purchase of transmission and distribution services pursuant to a filed tariff under the jurisdiction of the Federal Energy Regulatory Commission or a state public utility commission shall not constitute control of access to the provider's transmission and distribution facilities;

In this context, Applicant addressed the question of whether electric power and energy "can be physically and economically delivered" to the service areas of Applicant's affiliates by the Illinois utilities in whose service territories the Applicant plans to offer service. For purposes of demonstrating that the Illinois utilities cannot economically deliver power to the service areas of Applicant's affiliates, Applicant presented three analyses intended to compare the utility rates or costs in those affiliates' areas, on a \$/MWh basis, to the delivered cost of serving those customers by the Illinois utility. As explained more fully in the order of April 18, the first two analyses use market prices as proxies in the calculation of power and energy costs for Illinois utilities, while the third analysis is an incremental cost comparison. These analyses are described in Attachment C to the application, including Tables I, II and III therein, and in Applicant's March 21 response to the notice requesting additional information.

As noted above, PE Services, which holds a certificate as an ARES, filed an intervening petition opposing the application. An intervening petition was also filed by ComEd. The petitions for leave to intervene were granted, subject to the provisions of Section 16-115(d), which states, in part, "The Commission shall grant the application for a certificate...if it makes the findings set forth in this subsection based on the verified application and such other information as the **applicant** shall submit . . . ."

An Order was entered by the Commission on April 18. The order found, based upon a review of the three cost comparison approaches provided by Applicant, and the results thereof, that it would not be economical, under any of the three methods of analysis presented, for the Illinois utilities in question to deliver electric power and energy to the service areas of Applicant's affiliates at this time. Accordingly, the order found that the reciprocity provisions of Section 16-115(b)(5) should not preclude the Applicant from receiving an ARES certificate in this proceeding. That order granted an ARES certificate to Applicant for the service territories of ComEd and three other electric utilities.

### **Rehearing Request by PE Services**

On May 18, a petition for rehearing was filed by PE Services, an ARES. PE Services argues in part that the Commission should grant rehearing, and on rehearing should consider evidence from all interested parties on the reciprocity issue.

ComEd has not filed an application for rehearing, and the 30 day filing period has expired.

As the Commission will recall, when this case was considered by the Commission prior to entry of the order on April 18, there was discussion regarding the reciprocity provisions in Section 16-115(d)(5). It was stated that reciprocity was an important issue, but that input from other parties on this issue was problematic during the 45 day period for entry of an order under Section 16-115(b) in view of the language in Section 16-115(d), which states, in part, "The Commission shall grant the application for a certificate...if it makes the findings set forth in this subsection based on the verified application and such other information as the **applicant** shall submit . . . ." On this point, there were comments by some Commissioners that the rehearing process would be or may be an appropriate way to more fully address the reciprocity issue, including input from other parties.

As noted above, PE Services, which is an ARES, has filed for rehearing, but ComEd has not. Since the reciprocity provisions of Section 16-116(d)(5) appear to be primarily intended to protect Illinois electric utilities in certain circumstances, it could be argued that the case for rehearing is not as strong when the only party seeking rehearing is a non-utility.

In any event, the deadline for acting on PE Services' rehearing petition is June 7, 2000, which is a Commission session date.

LMJ/lw

**Docket No.:** 00-0199  
**Pre-Bench:** 05-31-00  
**Deadline:** 06-07-00

**SUPPLEMENTAL MEMORANDUM**

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**TO:** The Commission

**FROM:** Larry Jones, Hearing Examiner

**DATE:** May 30, 2000

**SUBJECT:** WPS Energy Services, Inc.

Application for Certificate of Service Authority under Section 16-115 of the Public Utilities Act.

**INTERVENORS:** Peoples Energy Services Corporation ("PE Services"), which holds a certificate as an ARES, and Commonwealth Edison Company ("ComEd").

**STATUS:** An order granting Applicant's request for an ARES certificate for the ComEd service area, as well as the service areas of certain other electric utilities, was entered on April 18, 2000 and served on April 19, 2000.

**REHEARING REQUEST:** A rehearing petition was filed by PE Services on May 18. ComEd has not filed a rehearing petition, and the time for doing so has expired. A memorandum regarding PE Services' rehearing petition, dated May 23, was distributed to the Commission. This rehearing matter is on the pre-bench for May 31. The deadline for action is June 7.

**PURPOSE OF THIS MEMO:** The purpose of the instant memorandum is to provide responses to written questions from Commissioner Kretschmer, dated May 26. Responses were requested by May 31.

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A memorandum regarding PE Services' rehearing petition, dated May 23, was previously distributed to Commissioners. The purpose of the instant memorandum is to respond to written questions from Commissioner Kretschmer, dated May 26. The questions, identified as 1, 2 and 3, are repeated as written in Commissioner Kretschmer's memorandum. The responses follow each question.

1. The basis for WPS Energy Service's certification that it complies with the Section 16-115(d)(5) reciprocity requirement is that power and energy cannot be economically or physically delivered by Illinois utilities. See Petition Attachment C at 2-3. Consequently, the implications of the Order's (your) conclusions quoted above are unclear. Does the Order exempt WPS Energy Service and its utility affiliates from the Section 16-115(d)(5) reciprocity requirement? If so, for how long?

**Response:**

WPS Energy and its utility affiliates are not exempt from the reciprocity requirement. However, the reciprocity provisions in Section 16-115(d)(5) do not preclude issuance of an ARES certificate unless electric power and energy "can be physically and economically delivered" by the Illinois utilities to the service areas of the applicant's affiliates. In the instant case, the Commission's order found that power and energy cannot be economically delivered by Illinois utilities at this time, and thus the statutory reciprocity provisions should not preclude the Applicant from receiving an ARES certificate. In other words, the order found that WPS Energy satisfied the reciprocity requirements in Section 16-115(d)(5). With regard to the reciprocity requirement, WPS Energy can retain its certificate as an ARES until such time as the Commission finds that power and energy can be both physically and economically delivered by Illinois electric utilities to a WPS Energy utility affiliate's control area. (See also the response to Question 2 below.)

2. Although I agreed with the Order's (your) conclusion regarding the physical ability to transmit electricity, I strongly disagreed with the conclusion regarding economic feasibility. It seems plausible that ComEd, CIPS, IP and/or CILCO may be able to find a customer or two within the service territories of WPS Energy Service's utility affiliates, but be refused delivery service based on the Order's conclusions quoted above. Furthermore, it is plausible that ComEd, CIPS, IP and/or CILCO would file a Section 16-115B(a) complaint in such an event. In light of the Order's (your) conclusions quoted above, could the Commission order WPS Energy Service's affiliate to provide delivery service or revoke WPS Energy Service's ARES certificate pursuant to such a complaint, if the evidence warranted? If so, what is the purpose of reaching any conclusions on economic or physical ability in the Order? If not, how would such a result comport with the intent of Section 16-115(d)(5)?

**Response:**

I do not believe the Commission has the authority to order WPS Energy's affiliates to provide delivery services. The Commission does have authority to revoke WPS Energy's ARES certificate, pursuant to Section 16-115B(b)(3), if it does not continue to comply with Section 16-115(d)(5). The purpose of reaching a conclusion on economic and physical ability in the order was to rule, as required by statute, on whether WPS Energy's application should be granted or denied. (See Section 16-115(b) and (d))

3. I can appreciate the basis for your ruling on the motions to intervene in this proceeding, which effectively prohibits the intervenors from offering evidence. See Larry Jones' May 23, Memo at 3. However, it seems unfair for the Commission to accept evidence from WPS Energy services regarding the economic ability of ComEd, CIPS, IP and CILCO to compete in the utility affiliates' service territories, but deny ComEd, CIPS, IP and CILCO the opportunity to respond (regardless of whether or not they actively sought to do so). Does this inequity suggest that the Commission should not be delving into the issue of economic and physical ability during certificate cases?

**Response:**

In the circumstance present in the WPS Energy application, it was necessary to address the issue of economic and physical ability during the certificate case in order to make the determination as to whether the application should be granted or denied under Section 16-115(d); such determination must be made within 45 days pursuant to Section 16-115(b). With regard to any inequities alluded to above, the problem is that the statute requires the Commission to "grant the application for a certificate of service authority if it makes the findings set forth in this subsection based on the verified **application** and such other information as the **applicant** may submit . . . ." (Section 16-115(d), emphasis added) That is, this language seems to place off limits, during the 45 day period, any consideration by the Commission of direct input from electric utilities in whose service areas the applicant wants to compete. However, as discussed at prior meetings, if any such electric utilities want the opportunity to address the reciprocity issue, the rehearing process under Section 10-113 would appear to offer a way to do so.

LMJ/lw